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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 REAGAN THOMAS,

12 Plaintiff,

13 v.

14 RAVERA, et al.,

15 Defendants.  
16

No. 2:15-cv-1936 KJM AC P

ORDER

17 Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and  
18 has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding  
19 was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

20 I. Application to Proceed In Forma Pauperis

21 Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. §  
22 1915(a). ECF Nos. 2, 9. Accordingly, the request to proceed in forma pauperis will be granted.

23 Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§  
24 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in  
25 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct  
26 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
27 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
28 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
3 1915(b)(2).

## 4 II. Statutory Screening of Prisoner Complaints

5 The court is required to screen complaints brought by prisoners seeking relief against a  
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
7 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
8 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek  
9 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

10 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."  
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
12 Cir. 1984). "[A] judge may dismiss [in forma pauperis] claims which are based on indisputably  
13 meritless legal theories or whose factual contentions are clearly baseless." Jackson v. Arizona,  
14 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute  
15 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490  
16 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,  
17 has an arguable legal and factual basis. Id.

18 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the  
19 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of  
20 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550  
21 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
22 However, in order to survive dismissal for failure to state a claim, a complaint must contain more  
23 than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
24 allegations sufficient "to raise a right to relief above the speculative level." Id. (citations  
25 omitted). "[T]he pleading must contain something more . . . than . . . a statement of facts that  
26 merely creates a suspicion [of] a legally cognizable right of action." Id. (alteration in original)  
27 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d  
28 ed. 2004)).

1 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
2 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell  
3 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
4 content that allows the court to draw the reasonable inference that the defendant is liable for the  
5 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint  
6 under this standard, the court must accept as true the allegations of the complaint in question,  
7 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading  
8 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.  
9 McKeithen, 395 U.S. 411, 421 (1969).

### 10 III. Complaint

11 In the complaint, plaintiff alleges that on December 26, 2014, defendant Rivera  
12 unexpectedly opened his cell door without any warning. ECF No. 1 at 5. When the door was  
13 opened, plaintiff’s “finger was c[a]ught between the inside door frame and the inside sliding door  
14 window frame,” amputating his finger. Id. He further alleges that there is a metal strip installed  
15 along the door frame because the unit where he was housed was previously an administrative  
16 segregation unit and that the metal strip is “‘hazardous’ and completely ‘dangerous’ to prisoners  
17 housed within.” Id. He claims that there are no warnings about the danger the doors pose. Id. at  
18 6. Plaintiff asserts that defendant Rivera “purposely and intentionally caused harm and injuries to  
19 [him]” and that, as warden, defendant Perry is responsible for plaintiff’s safety and his  
20 subordinate’s conduct. Id.

### 21 IV. Failure to State a Claim

#### 22 A. Defendant Rivera

23 “The Constitution does not mandate comfortable prisons, but neither does it permit  
24 inhumane ones.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (internal quotation marks and  
25 citations omitted). “[A] prison official violates the Eighth Amendment only when two  
26 requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious; a  
27 prison official’s act or omission must result in the denial of the minimal civilized measure of  
28 life’s necessities.” Id. at 834 (internal quotation marks and citations omitted). Second, the prison

1 official must subjectively have a sufficiently culpable state of mind, “one of deliberate  
2 indifference to inmate health or safety.” Id. (internal quotation marks and citations omitted). The  
3 official is not liable under the Eighth Amendment unless he “knows of and disregards an  
4 excessive risk to inmate health or safety; the official must both be aware of facts from which the  
5 inference could be drawn that a substantial risk of serious harm exists, and he must also draw the  
6 inference.” Id. at 837. Then he must fail to take reasonable measures to abate the substantial risk  
7 of serious harm. Id. at 847. Mere negligent failure to protect an inmate from harm is not  
8 actionable under § 1983. Id. at 835.

9       It is not clear from plaintiff’s complaint that defendant Rivera was aware of the risk to  
10 plaintiff’s safety when he opened the cell door. Although plaintiff makes a general accusation  
11 that defendant Rivera “purposely and intentionally caused harm and injuries,” there are no facts  
12 alleged in the complaint that would indicate that Rivera knew plaintiff’s was at risk for injury.  
13 Plaintiff alleges that Rivera opened the cell door, and that the cell doors are operated by the  
14 control booth officer. ECF No. 1 at 5. This indicates that Rivera was in the control booth when  
15 he opened plaintiff’s cell door, making it unlikely that he was aware that plaintiff’s hand was in a  
16 position to be injured by the door. There is nothing in the complaint to demonstrate that the  
17 incident, while unfortunate, was anything more than an accident and “[a]n accident, although it  
18 may produce added anguish, is not on that basis alone to be characterized as wanton infliction of  
19 unnecessary pain.” Estelle v. Gamble, 429 U.S. 97, 105 (1976); Harding v. City and County of  
20 San Francisco, 602 F. App’x 380, 382 (2015) (no constitutional violation when a pretrial  
21 detainee’s finger was severed after being accidentally slammed in a door). To the extent plaintiff  
22 is alleging that Rivera ignored a substantial risk of serious harm by not announcing that he was  
23 opening the door, plaintiff fails to allege any facts that would show Rivera was aware that the  
24 type of injury plaintiff suffered was a possible consequence of not announcing the door was being  
25 opened. The claims against defendant Rivera will therefore be dismissed with leave to amend.

26       B.     Defendant Perry

27       There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
28 connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.

1 362, 371, 376 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980). “Vague and  
2 conclusory allegations of official participation in civil rights violations are not sufficient.” Ivey v.  
3 Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

4 Additionally, “[t]here is no respondeat superior liability under section 1983.” Taylor v  
5 List, 880 F.2d 1040, 1045 (9th Cir. 1989). “A defendant may be held liable as a supervisor under  
6 § 1983 ‘if there exists either (1) his or her personal involvement in the constitutional deprivation,  
7 or (2) a sufficient causal connection between the supervisor’s wrongful conduct and the  
8 constitutional violation.’” Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting Hansen v.  
9 Black, 885 F.2d 642, 646 (9th Cir. 1989)). A supervisor may be liable for the constitutional  
10 violations of his subordinates if he “knew of the violations and failed to act to prevent them.”  
11 Taylor, 880 F.2d at 1045. Finally, supervisory liability may also exist without any personal  
12 participation if the official implemented “a policy so deficient that the policy itself is a  
13 repudiation of the constitutional rights and is the moving force of the constitutional violation.”  
14 Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations  
15 marks omitted), abrogated on other grounds by Farmer v. Brennan, 511 U.S. 825 (1970).

16 To the extent plaintiff appears to be making claims against defendant Perry based solely  
17 on his position as warden, he fails to state a claim for relief. Plaintiff must allege some specific  
18 action by Perry that violated his rights. It appears that plaintiff may be attempting to allege that  
19 Perry was deliberately indifferent to his safety because there were no warning signs about the  
20 potential danger the doors posed to inmates. ECF No. 1 at 6. However, nothing in the complaint  
21 suggests that Perry was aware of the potential danger or had reason to believe that warning signs  
22 were necessary. In order to be deliberately indifferent, plaintiff must allege facts that show that  
23 Perry knew of the risk to plaintiff’s health and safety and then ignored the risk. For these reasons,  
24 the claims against defendant Perry will be dismissed with leave to amend.

#### 25 V. Leave to Amend

26 If plaintiff chooses to file a first amended complaint, he must demonstrate how the  
27 conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo,  
28 423 U.S. at 370-71. Also, the complaint must allege in specific terms how each named defendant

1 is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can  
2 be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection  
3 between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740,  
4 743 (9th Cir. 1978).

5 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
6 his first amended complaint complete. Local Rule 220 requires that an amended complaint be  
7 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
8 amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
9 1967), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 929 (9th Cir. 2012) (claims  
10 dismissed with prejudice and without leave to amend do not have to be re-pled in subsequent  
11 amended complaint to preserve appeal). Once plaintiff files a first amended complaint, the  
12 original complaint no longer serves any function in the case. Therefore, in an amended  
13 complaint, as in an original complaint, each claim and the involvement of each defendant must be  
14 sufficiently alleged.

#### 15 VI. Summary

16 Plaintiff's request to proceed in forma pauperis is granted.

17 The complaint is dismissed with leave to amend because the facts plaintiff has alleged are  
18 not enough to state a claim for relief. If plaintiff wants to state claims against defendants Rivera  
19 and Perry, he needs to include facts that show that defendants were each aware of the risk to his  
20 safety and ignored it. For example, if defendant Rivera saw that plaintiff's hand would be caught  
21 by the door or if similar incidents occurred or there were complaints about the doors before  
22 plaintiff was injured, plaintiff should include these facts in his complaint.

23 If plaintiff chooses to amend his complaint, the first amended complaint must include all  
24 of the claims plaintiff wants to make because the court will not look at the claims or information  
25 in the original complaint. In other words, any claims not in the first amended complaint will not  
26 be considered.

27 In accordance with the above, IT IS HEREBY ORDERED that:

28 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.


1           2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
2 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
3 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
4 Director of the California Department of Corrections and Rehabilitation filed concurrently  
5 herewith.

6           3. Plaintiff's complaint is dismissed with leave to amend.

7           4. Within thirty days from the date of service of this order, plaintiff may file an amended  
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
10 number assigned this case and must be labeled "First Amended Complaint." Plaintiff must file an  
11 original and two copies of the amended complaint. Failure to file an amended complaint in  
12 accordance with this order will result in dismissal of this action.

13           5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint  
14 form used in this district.

15 DATED: January 5, 2017

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17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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